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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 IN THE MATTER OF THE
10 APPLICATION OF
11 JOHN RAY MILLER,
12 Petitioner.

Case No. 3:08-CV-00077-LRH-(RAM)
ORDER

13 Petitioner has paid the filing fee. The Court has reviewed his Petition for a Writ of Habeas
14 Corpus Pursuant to 28 U.S.C. § 2241 (#1) and finds that it must be dismissed. 28 U.S.C. § 2243.

15 Petitioner is in the custody of the Nevada Department of Corrections pursuant to three
16 judgments of conviction from the Second Judicial District Court of the State of Nevada, Case Nos.
17 CR98-1034, CR98-1081, CR98-1096. Petition, p. 7 (#1, p. 8).¹ Petitioner is currently challenging
18 the validity of those judgments in a petition for a writ of habeas corpus pursuant to 28 U.S.C.
19 § 2254 in Miller v. Bates, Case No. 3:01-CV-00548-ECR-(RAM).

20 In this action, Petitioner claims that his custody violates the Fifth Amendment because the
21 state charged him not by a grand-jury indictment, but by information.

22 The Court must dismiss this action for two reasons. First, despite all of Petitioner's
23 arguments to the contrary, 28 U.S.C. § 2254 would govern this action because Petitioner is in
24 custody pursuant to judgments of a state court. However, Petitioner insists that the Court not
25 construe the Petition (#1) to be pursuant to § 2254. Petition, p. 2 (#1, p. 3). The Court dismisses
26 this action because Petitioner has left the Court with no legal avenue to consider his claims.

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28 ¹Page numbers in parentheses refer to the Court's electronic images of the documents.

1 Second, Petitioner can raise his claim in Miller v. Bates, Case No. 3:01-CV-00548-ECR-(RAM), by
2 seeking leave to amend the petition in that action.² The Court dismisses this action because it
3 duplicates Miller v. Bates. See Slack v. McDaniel, 529 U.S. 473, 478 (2000).

4 IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice. The
5 Clerk of the Court shall enter judgment accordingly.

6 DATED this 3rd day of April, 2008.



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8 LARRY R. HICKS
9 UNITED STATES DISTRICT JUDGE
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27 2The Court expresses no opinion on whether Petitioner's claim has any merit or whether he
28 may actually amend his petition in Miller v. Bates.